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DEPARTMENT OF SAFETY

RICHARD M. FLYNN
COMMISSIONER

March 26, 2004

Marlene H Dortch, Secretary
Federal Communications Commission
445 12th Street, S W
Washington, D C 20554

APR 06 2004

Re RM-10865/DA No 04-700
Comments on the CALEA Petition for Rulemaking

Dear Secretary Dortch,

I am submitting these comments to you on behalf of the men and women of the New Hampshire Department of Safety in reference to joint petition filed on March 10, 2004 by the U S Department of Justice (DOJ), the Federal Bureau of Investigation (FBI) and the U S Drug Enforcement Administration (DEA). The petition requests the Federal Communications Commission (FCC) resolve, on an expedited basis, various critically important issues arising from the implementation of the Communications Assistance for Law Enforcement Act ("CALEA").

We feel that it is vitally important and consistent with Congress's intent in enacting CALEA, that the FCC initiate rulemaking proceedings and adopt the rules proposed by the DOJ, FBI and DEA in the above Petition. Congress enacted CALEA in 1994 to insure that law enforcement has the ability to conduct Court authorized wiretaps in the future as technologies changed. Since 1994, many new communication technologies have arisen, including broadband Internet access, voice over IP telephony ("VoIP"), push-to-talk digital dispatch services, and other digital packet mode services. These services, currently used by millions of American citizens, pose a real challenge to state and local law enforcement in that many such providers of these communication services have failed to voluntarily adopt currently available CALEA intercept solutions. Thus, law enforcement has been thwarted in its attempts to implement a lawfully authorized surveillance intercepts. Voluntary industry compliance with CALEA does not work.

One of the reasons for the passage of CALEA was to standardize the delivery of CALEA compliant data. This would allow law enforcement to set up wiretap intercept locations equipped to collect CALEA data from any number of telecommunication carriers. However, in the real world law enforcement has found that the only thing that is consistent is the inconsistency of the delivery methods. This forces law enforcement to

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equip our collection sites with a number of different and expensive solutions only to find out that none of them will work

In a recent criminal investigation conducted by the New Hampshire State Police several NEXTEL telephones utilizing the push-to-talk service were intercepted. During the course of the intercept numerous problems occurred in the interception of calls between the NEXTEL telephones occurring within the same switch. A simple solution would have been to have NEXTEL decode the encrypted digital packets and pass them on to law enforcement. However, because there was no requirement for them to do so NEXTEL would not decode the information and we simply muddled through the investigation intercepting some calls and missing others.

Furthermore, state and local law enforcement do not have the financial or personnel resources to develop costly ad hoc surveillance solutions for each new communications service. Nor should they have to under the current law. For all equipment, services and facilities deployed after January 1, 1995, Congress, through CALEA, expressly passed the burden of designing and paying for such surveillance solutions onto the telecommunications carriers themselves.

I would like to take this time to thank the FCC for its continued support for law enforcement and to encourage you to act upon the Petition and commence a rulemaking proceeding adopting the proposed rules.

Sincerely yours,



Richard M. Flynn
Commissioner of Safety